

Office of Government Ethics

§ 2641.203

The same legal question arises later in several contracts with other companies but none of the disputes with such companies is referred to the Office of General Counsel. The General Counsel had official responsibility for the determination of the Able Company matter, but the subsequent matters were never actually pending under his official responsibility.

Example 7 to paragraph (j): An employee of the National Endowment for the Humanities becomes “acting” Division Director of the Division of Education Programs when the Division Director is away from the office for three days to attend a conference. During those three days, the employee has authority to direct Government action in connection with many matters with which she ordinarily would have no involvement. However, in view of the brief time period and the fact that there remains an incumbent in the position of Division Director, the agency ethics official properly may determine that the acting official did not acquire official responsibility for all matters then pending in the Division.

Example 8 to paragraph (j): A division director at the Food and Drug Administration disqualified himself from participating in the review of a drug for Alzheimer’s disease, in accordance with subpart E of 5 CFR part 2635, because his brother headed the private sector team which developed the drug. The matter was instead assigned to the division director’s deputy. The director continues to have official responsibility for review of the drug. The division director also would have retained official responsibility for the matter had he either asked his supervisor or another division director to oversee the matter.

Example 9 to paragraph (j): The Deputy Secretary of a department terminates Government service to stay home with her newborn daughter. Four months later, she returns to the department to serve on an advisory committee as a special Government employee (SGE). After three months, she terminates Government service once again in order to accept a part-time position with a public relations firm. The 18 U.S.C. 207(a)(2) bar commences when she resigns as Deputy Secretary and continues to run for two years. (Any action taken in carrying out official duties as a member of the advisory committee would be undertaken on behalf of the United States and would, therefore, not be restricted by 18 U.S.C. 207(a)(2). *See* § 2641.301(a).) A second two-year restriction commences when she terminates from her second period of Government service but it applies only with respect to any particular matter actually pending under her official responsibility during her three-month term as an SGE.

§ 2641.203 One-year restriction on any former employee’s representations, aid, or advice concerning ongoing trade or treaty negotiation.

(a) *Basic prohibition of 18 U.S.C. 207(b).* For one year after his Government service terminates, no former employee shall, on the basis of “covered information,” knowingly represent, aid, or advise any other person concerning an ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee. “Covered information” refers to agency records which were accessible to the employee which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(b) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee at a Government-owned, contractor-operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(b) commences upon an employee’s termination from Government service. The restriction lasts for one year or until the termination of the negotiation, whichever occurs first.

(d) *Represent, aid, or advise.* [Reserved]

(e) *Any other person.* [Reserved]

(f) *On the basis of.* [Reserved]

(g) *Covered information.* [Reserved]

(h) *Ongoing trade or treaty negotiation.* [Reserved]

(i) *Participated personally and substantially.* [Reserved]